IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 1416 OF 2003

The State of Maharashtra .. Appellant

versus

Premnarayan Lalan Roy & ors. .. Respondents

...

Mr.A.M. Shringarpure, APP for the State.

None for the respondent.

CORAM : V.M. KANADE, J

DATED : 14th September 2004.

P.C:-

1. Appeal is filed by the State challenging the order of the 3rd Addl. Sessions Judge, Thane in Criminal Appeal no.10 of 2002 whereby the respondents were acquitted from the offences punishable u/s.452, 427, 352 and 323 r/w sec.34 of the IPC. The Magistrate convicted the accused and sentenced them to suffer RI for one year. The Sessions Court has

acquitted the accused. The case of the complainant is that he had purchased a room at Thane from the accused no.1. About 15 years before, the FIR was filed on 29th December 1999. The case of the complainant is that on 29th December 1999, there was a quarrel between the accused and the respondent. The said complainant was lodged as a N.C. complaint. Thereafter, the complainant returned home he found that the accused had entered the house and refused to vacate the room and thereafter, a fresh complaint was lodged.

2. The lower appellate Court came to the conclusion that since the accused no.2 and 4 was not identified before the Court as the person who had entered the house of the complainant, it was difficult to give any significance to her evidence. The lower appellate Court has further observed that witness PW no.3 Hameeda has also not noticed the presence of accused nos.1 and 3 in the house. The lower appellate Court also has noticed that so far as the evidence of PW no.4 Raghuvansh is concerned and the evidence of PW no.3 is concerned, there is a contradiction regarding the time of the incident. The lower appellate Court therefore, has observed that there are material discrepancies and inconsistencies in the evidence

adduced by the prosecution.

3. The view taken by the lower appellate court is a possible view. Initially, a non cognizable case was registered and thereafter, in the evening, a cognizable case was registered by the police. The observations and findings of the trial Court also do not appear to be perverse.

4. Leave is therefore refused. Appeal is rejected.

V.M. KANADE, J